

# ADR Weekly

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## National

- **Delhi HC holds that the role of a court under Section 11(5) or 11(6) of the Arbitration and Conciliation Act is limited to verifying an arbitration agreement and timely filing:** The Delhi High Court bench of Justice C. Hari Shankar has held when a Court exercises jurisdiction under Section 11(5) or Section 11(6) of the Arbitration and Conciliation Act, 1996, it has to only ensure the existence of an arbitration agreement between the parties and to confirm that the petition under these sections has been filed within three years of the service of a Section 21 notice. [*Raj Kumari Taneja Vs Rajinder Kumar & Anr.*, ARB.P. 862/2023]
- **Delhi HC orders arbitration in Ashneer Grover-BharatPe confidentiality violation case:** The Delhi High Court on Thursday appointed an arbitrator to address the dispute related to fintech firm BharatPe's allegations against its former managing director Ashneer Grover concerning breach of confidentiality under his employment agreement. Justice C. Hari Shankar issued the order after BharatPe filed a plea for arbitration, accusing Grover of violating his employment contract by disclosing confidential company information on social media. Both parties agreed to arbitration, but Grover's counsel proposed using the Singapore International Arbitration Centre (SIAC) due to its involvement in related shareholder disputes. [*Resilient Innovations Pvt. Ltd. vs Ashneer Grover*, O.M.P.(I) (COMM.) 388/2023]
- **Ambiguities in arbitration clauses should be addressed:** Madras HC Judge M. Sundar: Justice M Sundar, Judge, Madras High Court, on Saturday said much of the commercial disputes that end up in our courts stem from ambiguities in the arbitration clauses. "A simple, yet overlooked, solution lies in the meticulous drafting of these clauses. As we continue to work towards a more efficient judiciary, especially in the commercial realm, it is imperative that we also focus on preventing litigation from arising in the first place," he said at the first edition of Conference on Commercial Dispute Resolution organised by Confederation of Indian Industry (CII).



- Calcutta HC holds that government entities must be viewed equally in delay condonation applications under Section 37 of the Arbitration and Conciliation Act:** The Calcutta High Court bench of Justice Sabyasachi Bhattacharyya has held that a government entity should also be seen from an egalitarian perspective while considering application for condonation of delay in filing appeal under Section 37 of the Arbitration and Conciliation Act, 1996. The bench held that while government agencies are not granted undue favour as litigants, there should also be no undue bias against them. [*Hindustan Aeronautics Ltd. Vs Civcon Construction Pvt. Ltd.*, IA NO: GA-COM/1/2024, GA-COM/2/2024]
- Supreme Court holds that Arbitrator's Power To Award Pre-Reference & Pendente Lite Interest Is Not Restricted When Agreement Is Silent About It:** The Supreme Court held that the power of the Arbitrator to award pre-reference and pendente lite interest is not restricted when the agreement is silent on whether interest can be awarded or does not contain a specific term that prohibits the same. The Court summarised the propositions relating to the power of the Arbitrator to grant pre-reference interest, pendente lite interest, and post-award interest under the Arbitration and Conciliation Act. [*Pam Developments Pvt. Ltd. vs The State of West Bengal and anr.*, Civil Appeal Nos. 9781-9782 of 2024]
- Delhi HC upholds courts power to grant anti-enforcement injunctions against proceedings in foreign courts when they threaten arbitration initiated in India:** According to the Delhi High Court bench led by Justice C. Hari Shankar, the court may use Section 9 of the Arbitration Act to prevent a party from pursuing the foreign proceedings or from enforcing a potentially prejudicial decree if they pose a threat to the arbitral process that may be initiated in India. The respondent breached the arbitration agreement by filing a suit in Dubai, despite the contract specifying arbitration in New Delhi under Indian law. The Dubai Court found the petitioner guilty of breach and awarded damages to the respondent, which the petitioner sought to prevent from being enforced in India. The Delhi High Court granted an injunction against enforcing the Dubai Court's decree, allowing the petitioner to pursue arbitration as per the contract. [*Honasa Consumer Limited Vs RSM General Trading LLC, O.M.P.(I) (COMM.) 214/2024*]
- Calcutta HC holds that the grounds for challenge of an arbitral award are narrower under the 1940 Act compared to the 1996 Act:** A bench of Justice Sabyasachi Bhattacharyya holds that the grounds for the setting aside of an award under Section 30 of the 1940 Act were more restrictive than those provided for under Section 34 of the 1996 Act. In contrast to the grounds under Section 34 of the 1996 Act as they presently exist, under Section 30 of the 1940 Act, an award could only be set aside on the grounds of misconduct by the Arbitrator, if the award was made after an order by the Court superseding the arbitration, or if the award was improperly procured or otherwise invalid. [*State of West Bengal Vs Sambhu Nath Ghosh and another, A.P. No. 654 of 2011*]



- **Rajasthan HC holds that pre-arbitral steps cannot be seen as mandatory if they are impossible to fructify:** A bench of Justice Sudesh Bansal held that where pre-arbitration steps in the arbitration agreement cannot be performed, they could not be treated as mandatory in nature. L&T attempted to resolve the dispute through the Dispute Adjudication Board (DAB) as required by the contract, but RUIDP refused to appoint the DAB, leading L&T to seek arbitration. RUIDP raised objections, including claims that the arbitration application was premature, barred by limitation, and that the dispute was non-arbitrable due to the quantum of the escalated cost exceeding 10% of the contract value. The court rejected RUIDP's objections, stating that L&T had followed the necessary pre-arbitration steps and that the arbitration application was valid. The court appointed a sole arbitrator, Hon'ble Mr. Justice Ajay Rastogi, to adjudicate the dispute. [M/S Larsen and Toubro v Rajasthan Urban Sector Development Project & Anr., S.B. Arbitration Application No. 7/2024]
- **Delhi HC holds that time limit under Section 29A does not apply to arbitrations initiated before 2015:** A Delhi HC bench led by Justice Prateek Jalan has held that time limit under Section 29A of the Arbitration and Conciliation Act is not applicable to arbitral proceedings "commenced" as per Section 21 prior to 2015 amendment. The petitioner, M/S Chinar Steel Industries, sought an extension of the mandate of the Arbitral Tribunal under Section 29A of the Arbitration and Conciliation Act, 1996, for a dispute related to a construction project in Jammu and Kashmir. The respondent, IRCON International Limited, argued that Section 29A does not apply as the arbitration proceedings commenced before the section was inserted into the Act. The court agreed with the respondent, citing previous judgments that the commencement date of arbitration proceedings, as per Section 21, determines the applicability of Section 29A. [M/S Chinar Steel Industries Vs IRCON International Limited, O.M.P.(MISC.)(COMM.) 618/2024]

